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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 498

RAFAEL SANCHO BONET, Treasurer of Puerto Rico,
Petitioner,

VS.

YABUCOA SUGAR COMPANY,
Respondent.

REPLY BRIEF FOR PETITIONER,
IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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SUBJECT-INDEX

	Page
Point I—The 1923 amendments to Political Code were superseded in income tax cases by the complete Income Tax Code of 1925	1-5
Point II—The Treasurer's Regulations have nothing to do with this case	5-8
Point III—In relation to the question presented in this case of the conclusive character of the Treasurer's determination as to the merits of a claim under Section 75 of the Act of 1925, there is no confusion or contradiction whatever in the decisions in the Supreme Court of Puerto Rico, such as to warrant any disregard of the established rule concerning the respect to be shown to the decisions of a local Territorial Supreme Court interpreting local Territorial statutes	8-9
Point IV—The decision of the insular Supreme Court was clearly right	10-12
Point V—The supposed confusion or contradiction and errors, which the Respondent says it finds in the decisions of the insular Supreme Court with reference to the finality of the decision of the Treasurer upon a claim for refund of voluntary supposed overpayments, does not really exist. The decisions of the insular Supreme Court on this question are all in harmony with each other, and are clear and correct	12-15
Conclusion	15-16

TABLE OF CASES

	Page
Compania Agrícola de Cayey vs. Treasurer, 47 P. R. Dec. (Spanish ed.) 535	13,14
McCormick vs. Treasurer, 44 P. R. Dec. (Spanish ed.) 432	13
Porto Rico Fertilizer Co. vs. Rafael Sancho Bonet, Treasurer, 50 P. R. Dec. (Spanish ed.) 405	11,14
Puerto Rico vs. Shell Co., 302 U. S. 253	15
Serrallés vs. Treasurer, 30 P. R. Rep. 220	13

STATUTES

PUERTO RICO

Act No. 80, Income Tax Act of 1919	12, <i>et seq.</i>
Act No. 43, Income Tax Act of 1921	2, <i>et seq.</i>
Act No. 75 of August 2, 1923, amending Secs. 308, 310, and 313 of the Political Code of Puerto Rico	2, <i>et seq.</i>
Income Tax Act of August 6, 1925 (Act No. 74, the so-called "Income Tax Act of 1924")	1, <i>et seq.</i>

OTHER AUTHORITIES

Treasurer's Regulations of May 17, 1926	5, <i>et seq.</i>
Article 355	6-7, <i>et seq.</i>

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ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT
COURT OF APPEALS FOR THE FIRST CIRCUIT

REPLY BRIEF FOR PETITIONER,
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L

Respondent, in its Point "First" (*Brief*, pp. 10-13) contends that the insular Board of Review and Equalization has power under the Puerto Rican Income Tax Act of August 6, 1925 (the so-called "Income Tax Act of 1924") "to determine the correct amount of any income tax owing or thought to be owing by any taxpayer", and that the Board's power to entertain appeals is not limited to cases of "deficiency taxes".

Respondent contends that we are mistaken in saying (*Petitioner's Supporting Brief*, Points II and III, pp.

24 *et seq.*) that the Board of Review and Equalization is without power under the Act of 1925 to entertain any appeal or to bind the Treasurer by its decisions in any cases, other than those relating to "deficiency taxes" assessed by the Treasurer.

A. Respondent apparently concedes that there is nothing in the 1925 Act granting any jurisdiction to the Board in any cases other than those relating to deficiency taxes; and that the grant of jurisdiction to the Board in that Act, in deficiency cases, is, in form, a complete code relating to the jurisdiction of the Board in income tax matters, thereby impliedly excluding any broader or other jurisdiction in the Board.

B. Respondent contends, however, that the prior Act No. 75 of August 2, 1923 (Laws of 1923, pp. 604-610), amending sections 308, 310, and 313 of the Political Code of Puerto Rico, carries over, and remained in effect after the enactment of the Act of 1925, so as, in effect, to broaden the jurisdiction given to the Board by the 1925 Act, and to give the Board jurisdiction in all income tax cases, regardless of whether or not they are deficiency cases, in apparent contradiction of the provisions and intentions of the 1925 Act.

C. But respondent overlooks the facts that (1) the Act of August 2, 1923, upon which respondent relies, amending those sections of the Political Code in relation to the powers of the Board of Review and Equalization, so as to read as they are quoted by respondent (*Brief*, pp. 11-12) was enacted while the *Income Tax Act of 1921* was in effect (Act No. 43 of July 1, 1921, Laws of 1921, pp. 312-356); and that (2) under the 1921 Act, the taxpayer was not expected to pay his tax upon filing his income tax return. On the contrary, that Act contemplated that, in all cases, the amount of the tax to be paid should be

calculated and assessed by the Treasurer, some time after the taxpayer had made his return; and that the taxpayer was not expected to pay the tax until after it had thus been assessed by the Treasurer and notice of the amount thus assessed had been given to the taxpayer (Act of 1921, Secs. 19-26, 32, 38, 40, 41; Laws of 1921, pp. 334-346). So that, *in all cases*, there was an *assessment* by the Treasurer, and if the taxpayer objected to the assessment an appeal was provided for him to the Board of Review and Equalization (Act of 1921, Secs. 45-47; Laws of 1921, p. 348).

D. *It was in order to make the corresponding sections of the Political Code correspond to that scheme of assessment of the 1921 Income Tax Act*, that the Legislature enacted the Act No. 75 of August 2, 1923, upon which respondent now relies, amending sections 308, 310, and 313 of the Political Code.

E. *But that scheme for the payment of income taxes was revolutionized by the Income Tax Act of 1925, here involved.*

Instead of the taxpayer being expected to wait before payment of the taxes until after his tax return had been examined by the Treasurer and the amount of the tax calculated and assessed and notification of the amount given to the taxpayer with a request for payment, this new Act of 1925 requires the taxpayer to make payment immediately, coincidentally with filing his tax return, of the amount calculated by himself; and contemplates that he will not receive any notice from the Treasurer at all, *unless* the Treasurer afterwards finds that the taxpayer has not paid as much as the "correct amount of the tax", as determined by the Treasurer on subsequent examination of the tax return; and that, in such cases of underpayment (or of failure to pay) the Treasurer shall assess a "*deficiency tax*" and notify the taxpayer of the amount of such "*deficiency tax*"; and then that

the only office of the Board of Review and Equalization is to consider appeals from any such "deficiency tax" thus assessed by the Treasurer, to which a taxpayer may object.

~~That is an entirely new scheme~~, with which the former provisions for appeals to the Board, as contained in the 1921 Income Tax Act and in the 1923 amendments to the Political Code,—which, as above pointed out, were enacted in order to conform with the 1921 Act,—just do not fit at all.

F. The 1925 Act was not an amendment of the former 1921 Act; but was a complete new income tax code.

The 1925 Act is entitled:

"An Act to provide revenues for the People of Puerto Rico through the levying of certain income taxes, and for other purposes" (Laws of 1925, page 400),

and its first section provides:

"Section 1.—This Act shall be known as the 'Income Tax Act of 1924' " (Laws of 1925, page 400).¹

Furthermore, its Section 85 expressly provides (Laws of 1925, page 548):

"Section 85.—(a) Income Tax Law No. 43, approved July 1, 1921, as amended, is repealed as of January 1, 1924."

G. This new complete code, carrying this express repeal of the entire prior income tax system, necessarily superseded all contradictory provisions relating to the powers of the Board of Review and Equalization contained in the prior laws, whether in the 1921 Income Tax Act itself, or in the 1923 amend-

¹ Although not enacted until August 6, 1925. See our original Petition, footnote 3, p. 9.

ments of the Political Code which had been made in order to conform to the 1921 Act.² [Or, perhaps, it might be more accurate to say, with relation to those sections of the Political Code, that, necessarily, they are impliedly amended by the later 1925 Act, so that the powers and jurisdiction of the Board, on appeals in income tax cases, are thereafter to be such,—(*and such only*),—as are provided in the 1925 Act.]

H. It follows that, since the enactment of the 1925 Act, which is the *later expression of the legislative will*, the powers and jurisdiction of the Board are those granted it by that 1925 Act; and, in relation to income tax cases, *are only those*; and are none others.

I. Whence it results that, as was originally pointed out by this petitioner (**Supporting Brief, Points II and III**, pp. 24-27), the jurisdiction of the Board of Review and Equalization in income tax cases is now limited to appeals relating to “deficiency taxes”.

II

The Treasurer's Regulations have nothing to do with this case.

Respondent, in the latter part of its Point “Second” (*Brief*, at pp. 19-21), quotes regulations promulgated by the insular Treasurer (a predecessor of the present Treasurer), on May 17, 1926, and claims that they have a controlling effect here. Those are the same regulations to which reference was made by JUDGE BINGHAM in his

² And so, *vice versa*, it has finally been held that the still later amendment of the general tax laws by the Act of 1927 concerning the time within which to begin suits for tax refunds, does not affect this Income Tax Act of 1925, because this income tax act is *a complete code in itself*, covering the law with relation to income taxes. (*Confer*, last paragraph of JUDGE WILSON's opinion in the Circuit Court of Appeals; R. 40).

opinion in the Circuit Court of Appeals (R. 32-33), as we noted in our original Supporting Brief (p. 16; footnote 9), and to which neither of the other Judges of the Circuit Court of Appeals, nor the insular Supreme Court, paid any attention.

A. Aside from the fact that this is not a case of supporting any long-established administrative practice embodied in a rule of any administrative officer, or acted upon and enforced by the administrative officer in question and by the local courts,—*but the exact contrary*, because, here, *the Treasurer did not consider these regulations applicable, and did not apply them*, and the local courts likewise disregarded them and supported the action of the Treasurer here,—**these regulations**, on their face, **do not apply to this case**.

B. Respondent's counsel quote and rely on (*Brief*, pp. 19-20) Article 355 of the Regulations of May 17, 1926. On its face, its applicability hinges upon the first seventeen words of its sub-paragraph "(1)", which read:

"(1) When the taxpayer receives notice from the Treasurer that the income tax has been determined, he may: ***".

Then follow the several things that the taxpayer may do. But it all hinges on the taxpayer having thus received "*notice from the Treasurer that the income tax has been determined*". [Sub-paragraph ("2") follows along, after that original "notice" contemplated by sub-paragraph "(1)"].

C. Plainly, on its face, the language of that Regulation is a "hangover" from the language of some prior regulations that had been promulgated under the prior Income Tax Law of 1921, and were suitable to that law, under which, as hereinbefore point-

ed out (*ante*, pp. 2-3), the taxpayer was not required nor expected to make any payment at the time he filed his income tax return, but only after having, later on, received notice from the Treasurer that, as this Regulation phrases it, "the income tax has been determined".

The draftsman of this Regulation, issued the following Spring after the enactment of the new 1925 Income Tax Act, had apparently not completely grasped the revolutionary character of the change in the system of payment of income taxes contemplated by the new 1925 Act [*confer, ante*, pp. 3-5], and failed fully to adapt the language of the Regulation to the new system contemplated by the 1925 Act. But, in any event, taking the language of the Regulation just as it stands, and attempting to fit it in to the provisions of the 1925 Act, this language of the Regulation can, on its face, properly apply only to cases of "deficiency taxes".

D. Under the 1925 Act, it is only in the case of assessment of "deficiency taxes" that the taxpayer "receives notice from the Treasurer that the income tax has been determined", within the language of this Regulation as above quoted. That language of the Regulation aptly describes the notice of the assessment of deficiency taxes, which the Treasurer is required to send to the taxpayer by registered mail, under section 57(a) of the 1925 Act. And, upon receipt of such "notice", the taxpayer actually does have, under the 1925 Act, substantially the elections that are stated in this Regulation as quoted in Respondent's Brief (pp. 19-20).

But, under the 1925 Act, all of that language of the Regulation necessarily applies only to "deficiency taxes". All of this, by its own express wording, relates only to

what the taxpayer may do *after* he *has received* this "notice", under section 57(a) of the Act.³

E. Hence, in the present case, which does not relate to "deficiency taxes",—nor to any taxes paid after the taxpayer had received any kind of a "notice" from the Treasurer,—but relates, on the contrary, wholly to taxes voluntarily paid, under the Act of 1925, coincidentally with filing the taxpayer's income tax return and in accordance with the amount shown due by the taxpayer itself upon the face of its own return,—the insular courts were correct in disregarding this regulation, as did also JUDGES WILSON and MORTON in the Circuit Court of Appeals.

III

In relation to the question presented in this case of the conclusive character of the Treasurer's determination as to the merits of a claim under Section 75 of the Act of 1925, there is no confusion or contradiction whatever in the decisions in the Supreme Court of Puerto Rico, such as to warrant any disregard of the established rule concerning the respect to be shown to the decisions of a local Territorial Supreme Court interpreting local Territorial statutes. [Confer our "Point IV" (pp. 32-34) of our original Supporting Brief].

Respondent, in its point "Third" (*Brief*, pp. 21-26), discusses decisions of the Supreme Court of Puerto Rico relating to *other questions* under the income tax laws of that Territory, which appellant's counsel say were con-

³ Under the prior 1921 act, as above pointed out (*ante*, p. 3), the taxpayer received this "notice" before he was required or expected to make any tax payment at all; and hence the "notice" applied,—and this language of the Regulation (or substantially the same language under prior regulations) was, therefore, properly applicable,—to all income taxes; instead of, as under the present 1925 Act, only to "deficiency taxes".

fusing or contradictory. But, as we pointed out in a footnote to our original Petition for Certiorari (*Petition*, p. 18, footnote 12), in connection with JUDGE WILSON'S views on this point (substantially the same views now elaborated in Respondent's Brief), all of what is said in relation to "conflicting decisions", or supposed confusion in decisions of the insular Supreme Court, *relates to questions not here involved*, and does not at all affect the continuity of the unbroken chain of decision in the insular Supreme Court, followed and applied by that court in the present case, in relation to the question presented in this case. As we there said (*Petition*, p. 18, footnote 12):

"there are no 'conflicting decisions' of the insular Supreme Court upon the questions here involved of the supposed right of a taxpayer to appeal to the Board of Review and Equalization from the determination of the Treasurer under sections 54, 55, 64, and 75 of a claim for supposed voluntary overpayment, and of the supposed right of the taxpayer to maintain an action in court, such as this, practically in the nature of an appeal to the courts from the Treasurer's determination of such a claim for refund of voluntary supposed overpayment. On those questions *there is no conflict in the decisions of the Supreme Court of Puerto Rico*. That court has uniformly (and unanimously) held, in three decisions, including that in the present case, that the Treasurer's determination of such a claim for a refund is final; that that is a matter entrusted by those sections of the statute to the Treasurer's determination in his sound executive discretion; and the insular Supreme Court has never recognized any right of appeal from the Treasurer, from such a determination on a claim for refund of such voluntary payments, either to the Board of Review and Equalization, or to the courts."

The decision of the insular Supreme Court was clearly right.

A. In relation to voluntary income tax payments made by a taxpayer upon filing his own income tax return under the 1925 Act, the "mandatory duties" of the Treasurer are simply: (1) To examine the return and to "determine the correct amount of the tax" (Sec. 54); and (2) If the Treasurer finds that the taxpayer has overpaid the amount which the Treasurer has thus "determined to be the correct amount" of the tax (or of an installment) then to credit or refund the amount of such overpayment *as thus determined by the Treasurer* (Secs. 55, 64).

B. In addition, if the taxpayer, at any time within four years [Sec. 64(b)], claims that he has mistakenly, —although voluntarily and without any protest,—made any overpayment, then the Treasurer is "authorized" to refund any amount which he may find to have been "erroneously or illegally assessed or collected" or to have been "unjustly assessed or excessive in amount, or in any manner wrongfully collected", and to "make report to the Legislature of Puerto Rico" of such refund (Sec. 75).

C. Of course that provision of Section 75 of the Act, that the Treasurer is "authorized" to make such refunds, means that a mandatory duty is imposed upon him *to hear and determine and to judge* any such claims that may be presented to him; *but that is the extent of his mandatory duty* under that Section 75, viz., *to hear and to determine and to judge*.

If he performs that duty, if he accords the claimant a full and fair hearing, and regularly determines and judges the claim, then that is the end of it. The Legislature has provided no appeal from the Treasurer's de-

cision on such a claim. The Treasurer, under Section 75 in connection with Sections 54 and 55, determines the "correct amount of the tax", and makes such refund, if any, as, upon such hearing under Section 75, he finds to be correct.⁴

D. As the insular Supreme Court phrased it, in its opinion on rehearing in the *Fertilizer Company* case, July 23, 1936, in considering the powers and duties of the Treasurer under this Section 75 of the Act of 1925 (50 P. R. Dec. 405, 410-411, *Spanish Edition*; translations in Appendix III (p. 50) to our original Petition for Certiorari, and also in Appendix "B" (p. 36) to Respondent's Brief):

"The authorization cannot, in fact, be more ample. The Treasurer acts by himself. *He is called upon to judge the merits of each claim.* By said Section 75 he is only charged with the duty of rendering a report to the Legislature of Puerto Rico, at the inception of each regular session, of all the transactions carried to effect by him in the exercise of said authorization." (*Italics supplied*)

E. To "judge". That is the apt word to describe the Treasurer's powers under Section 75. He exercises *quasi-judicial power to hear and to determine*. That is the furthest removed from,—is, indeed, the exact antithesis to,—any uncontrolled or irresponsible "discretionary" power (*Respondent's Brief*, p. 9) to or to the indulgence of any "whim" of the Treasurer (JUDGE BINGHAM, R. 33).

⁴ Doubtless, if the Treasurer refused a proper hearing under Section 75, or proceeded in an irregular manner, or refused refund of an amount which he had himself determined had been excessively collected above the "correct amount of the tax" determined by him under Section 54, then *mandamus* would lie to compel him to do his duty. There is no suggestion in this record of any such abuse of the Treasurer's powers in the present case.

Nothing is left to the Treasurer's "whim" or to any uncontrolled "discretionary" power; but, as the insular Supreme Court holds, the *quasi-judicial* duty is imposed on the Treasurer to *judge* the merits of each claim. He is bound by the rules of fair play applicable to all hearings and decisions by administrative tribunals, as well as to the superior courts; but the Legislature had the undoubted power to provide, as it did by the Act of 1925, that, after this full hearing has been awarded, and after the Treasurer has performed his duty "to judge the merits of the claim", and has thus judged and decided it, then the taxpayer has no appeal to the courts from the the Treasurer's decision. It is final.⁵ [In the absence, of course, of any claim of irregularity in procedure, or of any abuse of that kind of the Treasurer's power. No such claim of irregularity is made in this record].

V.

The supposed confusion or contradiction and errors, which the Respondent says it finds in the decisions of the insular Supreme Court with reference to the finality of the decision of the Treasurer upon a claim for refund of voluntary supposed overpayments (*Brief*, pp. 22-25), does not really exist. The decisions of the insular Supreme Court on this question are all in harmony with each other, and are clear and correct.

A.—By section 66 of the Puerto Rican Income Tax Act of 1919, the Treasurer was given authority to consider claims for, and to "remit, reimburse or make restitution for" income taxes erroneously or unlawfully imposed or collected; but his decision was not made final. To the contrary, it was expressly provided that if the Treasurer "refuses without reason to grant such a claim", then "the aggrieved party may appeal to the courts of justice" (Act No. 80, Laws of Puerto Rico,

⁵ See our original Supporting Brief, Point I, pp. 23-24.

1919, p. 666; Appendix I to our original Petition for Certiorari, pp. 48-49).

B.—In cases arising under that Act of 1919, the Supreme Court of Puerto Rico held that, *in view of that express provision of the Statute* allowing “the aggrieved party” an “appeal to the courts of justice”, such an “appeal”, in the form of an action in the appropriate insular district court for a tax refund, would lie at the suit of “the aggrieved party”, the taxpayer, even though the original tax payment had been made voluntarily and without protest. *Serrallés vs. Treasurer*, 30 P. R. Rep. 220, 223-224; *McCormick vs. Treasurer*, 44 P. R. Dec. (Spanish ed.) 432, 438-440. [The same cases cited in our original Supporting Brief here (Point III, pp. 27-28).]

C.—By the Income Tax Law of 1921 (Act No. 43, Laws of Puerto Rico, 1921, pp. 312, 356; Appendix to our original Petition for Certiorari, p. 49) the entire Act of 1919 was repealed by the repealing clause, Section 66 of the Act of 1921. The 1921 Act was substituted as a complete new code. This 1921 Act contained no provision corresponding to Section 66 of the former 1919 Act, and no provision of any kind for refunds of income tax payments paid voluntarily and without protest.

D.—In view of that repeal by the 1921 Act of the former provision of Section 66 of the 1919 Act, the Supreme Court of Puerto Rico held in the *Compania Agrícola de Cayey* case, followed by that court in the present case, that (as quoted in our original Supporting Brief here, pp. 28-29) there no longer remained, from 1921 to 1925 [that is to say from the date of the enactment of the 1921 Act up until the enactment of the 1925 Act] any authority anywhere in the Puerto Rican governmental establishment, either in the Treasurer or in anybody else, to make refunds of voluntary income tax payments paid without protest.

E.—By section 75 of the Income Tax Act of 1925, authority was again given to the Treasurer to consider such claims, and to make such refunds, and to report his actions to the Legislature. But this authority was given in somewhat different form from that given by Section 66 of the former 1919 Act, and the provision contained in Section 66 of the 1919 Act permitting the taxpayers recourse to the courts from the Treasurer's decisions on claims for such refunds, *was entirely omitted* from Section 75 of the 1925 act. And, as is pointed out in our original Supporting Brief here (Point III, pp. 27-32), *that omission was manifestly purposeful on the Legislature's part*. It is believed that nothing further need be added to what is there said in our Supporting Brief as to *the deliberate intention of the Legislature* in omitting that provision from the 1925 Act.

F.—Under those circumstances, and in view of that legislative history, and of the deliberate omission by the Legislature from Section 75 of the 1925 Act of the provision which it had put into the corresponding Section 66 of the earlier 1919 Act, the Supreme Court of Puerto Rico, following its decision in the *Compania Agrícola de Cayey* case *supra* (*Compania Agrícola de Cayey vs. Treasurer*, 47 P. R. Dec. [*Spanish ed.*] 535, 538-540), held on rehearing, July 23, 1936, in the *Porto Rico Fertilizer Company* case, *supra* (50 P. R. Dec., *Spanish ed.*, 405, 410-414; translation in Appendix III (pp. 50-54) to our Petition for Certiorari here, and also in Appendix "B" (pp. 32 *et seq.*) to Respondent's Brief in Opposition),—and followed and adhered to it in the present case, that, as quoted in our original Petition for Certiorari (pp. 14-15),

"As the law now stands, we do not find that the taxpayer of income taxes may resort to the courts of justice without paying under protest.*** He may also, though he has not paid under protest, if he

considers that the tax was erroneously or illegally levied and is unfair and excessive, petition the Treasurer to refund to him the amount paid for said tax, in accordance with the authority granted to said official by Article 75 of the law, but if the decision of the Treasurer is against him he cannot appeal from the same to the courts of justice."

G. As we have said, the decisions of the Supreme Court of Puerto Rico upon this point are plain and free from confusion.

They are in harmony with each other. They clearly trace the development of the legislation. They are reasonable. They are all unanimous. The power which they hold that the Legislature exercised, to make the determinations of the Treasurer final under Section 75 of the 1925 Act, is clearly a power within the legislative authority vested in the Legislature of Puerto Rico by the Organic Act of the Congress, by which that Legislature has been invested in such matters with powers "nearly, if not quite, as extensive as those exercised by the State legislatures". *Puerto Rico vs. Shell Co.*, 302 U. S. 253, 262. [And confer our original Supporting Brief, Point I, pp. 23-24].

H. Under these circumstances, there should be accorded to these unanimous and harmonious decisions of the Supreme Court of Puerto Rico the respect regularly accorded by the established rule to decisions of a Territorial Supreme Court interpreting local Territorial statutes.

CONCLUSION

JUDGE MORTON was right in holding that this judgment of the insular Supreme Court, affirming that of the District Court of San Juan, was correct, and should be affirmed.

The question here presented is of public importance. The writ of certiorari should issue, and after hearing the judgment of the Circuit Court of Appeals should be reversed, and that of the insular Supreme Court affirmed.

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